



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL



March 8, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102

Dear Commission Secretary:

Enclosed are an original and fifteen (15) copies of Reply Comments filed by this office on behalf of the Texas Advisory Commission on State Emergency Communications ("TX-ACSEC"). Please distribute the filing as appropriate, and file mark the extra copy and return it in the enclosed self-addressed, stamped envelope.

Thank you for your attention in this matter.

Sincerely,

Richard A. Muscat
Assistant Attorney General
State Bar No. 14741550
Counsel for TX-ACSEC

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Revision of the Commission's
Rules to Ensure Compatibility
with Enhanced 911 Emergency
Calling Systems

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CC Docket No. 94-102

To: The Commission

**ADDITIONAL REPLY COMMENTS OF THE TEXAS ADVISORY COMMISSION
ON STATE EMERGENCY COMMUNICATIONS**

NOW COMES THE TEXAS ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS (TX-ACSEC), by and through the Office of the Attorney General of Texas, and submits these REPLY COMMENTS in response to the Commission's supplemental notice, FCC Public Notice DA 96-198 (February 16, 1996) in CC Docket No. 94-102 seeking additional comments and replies on the "Public Safety-Wireless Industry Consensus" ("the Consensus Agreement").

I.

INTRODUCTION

1. The Consensus Agreement will greatly benefit the public health and safety of the people of the nation by clearing away the obstacles to national availability of E-9-1-1 wireless services. The Consensus Agreement has a broad base of support from a diverse group of interested parties. The four basic principles of the Consensus Agreement are: (1) speedy implementation of cell site information using a 7 or 10-digit pseudo-ANI and a 7 or 10-digit caller ANI (i.e., calling party number), depending on the local landline networks

signaling capability, which the Commission referred to as “Phase 1” in the NPRM; (2) abandonment the Commission’s proposed “Phase 2” radiolocation objective as not meeting the needs of the wireless industry or the 9-1-1 community for reliable location information; (3) implementation within five years of the ability to locate, in latitude and longitude, a wireless caller within 125 meters Root Mean Square (RMS), which the parties refer to as the new “Phase 2”; and (4) funding, in moving to the new “Phase 2,” for wireless carriers and Public Safety Answering Points (PSAPs) consistent with, and not to exceed, the relevant landline 9-1-1 taxes and fees. The Consensus Agreement appropriately addresses the major wireless 9-1-1 issues in CC Docket 94-102.

2. Most comments on the Consensus Agreement support all or most of the agreement. See, Additional Comments of Southwestern Bell Mobile Systems, Inc. at p. 1; Comments of GTE Mobilnet Incorporated at p. 2; Comments of the Personal Communications Industry Association at p. 3; Additional Comments of KSI Inc. at p. 2; Comments of Vanguard Cellular Systems, Inc. at p. 3; Comments of Northern Telecom, Inc. at p.1; Comments of Concepts to Operations, Inc. at p. 1; Additional Comments of Nextel Communications, Inc. at p. 4; Comments of Motorola, Inc. at p. 3. In a proceeding such as this that involves many parties and issues, universal support for every aspect of any agreement, while a desired objective, is rarely realistically attainable. Nevertheless, the four basic principles of the Consensus Agreement have a broad base of support from most interested parties because they address the major issues reasonably.

3. Several comments on the Consensus Agreement raise issues that are either appropriately addressed by the Consensus Agreement, which already includes the flexibility

requested, or by the Commission simply clarifying that it retains discretion to deal with unique or special situations, if such becomes necessary. No comments on the agreement presented a valid or a reasonable basis for not moving forward now on the four basic principles of the agreement. TX-ACSEC requests that the Commission adopt the Consensus Agreement as soon as possible.

II.

STATE FUNDING COMPARABLE TO LANDLINE 9-1-1 IS APPROPRIATE

4. The Rural Cellular Association (“RCA”) comments that it “concur[s] in the Agreement’s conclusion that a cost recovery mechanism is needed to fund both carrier (wireless and wireline) and PSAP investment in E911 technology and cost of service.” RCA complains, however, that there “is no guarantee that such state or local assistance will materialize.” RCA further submits that the Commission should “also adopt a federally-mandated cost recovery mechanism.” RCA Comments at pp. 5-6. RCA is correct that there is no guarantee that state and local funding comparable to landline 9-1-1 funding will actually materialize. **No federally mandated funding mechanism, however, should be considered at this time, much less adopted.** Even if, *arguendo*, the Commission had the authority to preempt state and local 9-1-1 taxes and fees for public health and safety, which is an area many state and local governments feel strongly cannot be preempted, it is premature for the Commission to entertain that issue.

5. State and local landline 9-1-1 funding, through state and local taxes and fees, has a proven track record and has worked well nationally for landline 9-1-1 service. As GTE Mobilnet appropriately points out “[b]ecause most states are directly and regularly

involved in this process, any federal rules prescribing funding methods or requirements could potentially disrupt current 911 funding systems.” Comments of GTE Mobilnet Incorporated at p. 8; see also, U.S. West’s Supplemental Comments at pp. 10-11; Comments of Vanguard Cellular Systems, Inc. at pp. 4-5. TX-ACSEC submits that state and local governments will address the 9-1-1 wireless funding issue appropriately, if they have not done so already, once the Commission has adopted the Consensus Agreement.

6. Several states, including California, Vermont, South Dakota, Oregon, Louisiana, New Hampshire, Washington, and New York, have enacted wireless 9-1-1 funding legislation comparable to their landline 9-1-1 funding. Last year in Illinois, Florida, and Texas specific 9-1-1 wireless funding legislation comparable to landline 9-1-1 funding was proposed but not ultimately enacted. TX-ACSEC’s own experience in Texas is that the major “road block” to state and local government funding has been some cellular carriers.¹ Adoption of the Consensus Agreement may provide those cellular carriers the incentive they need to stop undermining attempts to obtain funding for 9-1-1 wireless service at the state and local level. TX-ACSEC is committed to the principle embodied in the Consensus Agreement that the wireless carriers should be compensated for providing 9-1-1 services just as the landline carriers have been compensated for providing 9-1-1 services. Nevertheless,

¹ After the proposed Texas legislation to clarify its authority was not enacted and in light of factual and regulatory changes, TX-ACSEC proceeded to address the 9-1-1 wireless funding issue under its existing state statutory authority through the adoption of a state rule that treated landline and wireless customers equally for purposes of the local 9-1-1 emergency service fee. Cellular carriers, however, challenged that rule in state district court, by a declaratory judgment action as beyond TX-ACSEC’s rulemaking authority. The state district court denied the cellular carriers’ petition for declaratory relief, holding that TX-ACSEC’s adoption of the rule was within its existing statutory authority. Cellular carriers are currently considering whether to appeal that judgment to a state court of appeals even though some of these same carriers have submitted comments in this proceeding urging the necessity for funding.

at some point, it becomes incumbent on all cellular carriers to either cooperate on the funding issue at the state and local level or they must stop using the lack of funding as a basis for not moving forward on implementing enhanced 9-1-1 wireless services in the communities that want these services for their citizens.

7. State and local governments, if they have not done so already, must have the opportunity to address the 9-1-1 wireless funding issue in light of the Commission's adoption of the Consensus Agreement. TX-ACSEC submits that state and local governments will act responsibly and do their part as far as 9-1-1 wireless funding once the Commission has cleared away the obstacles to availability by adopting the Consensus Agreement.

III.

SPECIAL IMPLEMENTATION ISSUES CAN BE REASONABLY ADDRESSED

8. RCA comments that

In many areas of the country, not even landline telephone subscribers have access to E-911 services. Consequently, it is premature to mandate national deployment of mobile E-911 capabilities. At minimum, implementation policies must recognize that a safe-harbor mechanism is appropriate -- cellular providers serving rural jurisdictions must be afforded a reasonable time frame for implementation after the local emergency service provider has deployed the technology to receive E-911 information. (emphasis in original)

RCA Comments at p. 2. RCA raises the same basic issue as to "Phase 1" and the new "Phase 2." See, RCA Comments at pp. 2-5. The Ad Hoc Rural Cellular Coalition ("RCC") also raises similar concerns. See, Comments of the Ad Hoc Rural Cellular Coalition on the "Consensus Agreement" Between CTIA and Public Safety Groups at p. 3. The Consensus Agreement, however, does not mandate a "national deployment," but rather national

availability for situations where local 9-1-1 entities have requested and want to pay for the E-9-1-1 services from wireless carriers. RCA's specific "deployment" concerns for rural areas can be easily addressed in a manner similar to that suggested by RCA -- simply allow the wireless carriers a reasonable time after they have received a bona fide request from the local 9-1-1 entities for the enhanced 9-1-1 wireless services. See, Additional Comments of Southwestern Bell Mobile Systems, Inc. at pp. 2-3. Furthermore, the Consensus Agreement already recognizes that exceptions will be necessary even when parties are working in good faith. See, Consensus Agreement at p. 3. The Commission could address exceptional circumstances by entertaining requests for exemptions in special situations, if such should be necessary.

IV.

THE 12 MONTH AND THE 5 YEAR SCHEDULES ARE APPROPRIATE

9. Some comments on the Consensus Agreement urged delaying either "Phase 1" or "Phase 2." See, e.g., Comments of BellSouth Corp. at pp. 3-5; Comments of Motorola, Inc. at pp. 3-6; Comments of Northern Telecom, Inc. at pp. 3-6. The Commission should reject these suggestions. In some areas of the nation, technical or financial reasons may delay availability of either "Phase 1" or "Phase 2" beyond the 12 month or the 5 year schedule. However, in other areas of the nation, availability of one or both phases may be technically and financially feasible **today**. The Consensus Agreement and the Commission's adoption of the agreement, as discussed above, provides sufficient flexibility and good faith requirements to appropriately deal with any necessary delays. The Commission should not extend the 12 month schedule or the 5 year schedule any further.

V.

CONCLUSION

10. The nation will benefit greatly from the Commission's adoption of the Consensus Agreement. Implementation of enhanced 9-1-1 wireless services should not be delayed any longer. TX-ACSEC respectfully requests that the Commission expeditiously adopt the Consensus Agreement.

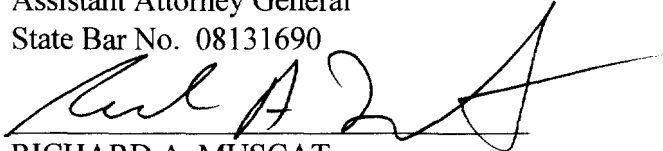
Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

THOMAS P. PERKINS JR.
Chief, Consumer Protection Division

RUPACO T. GONZÁLEZ JR.
Chief, Public Agency Representation Section
Assistant Attorney General
State Bar No. 08131690



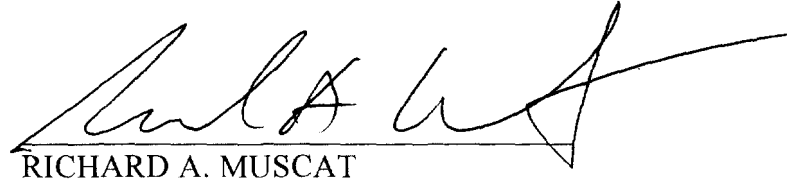
RICHARD A. MUSCAT
Assistant Attorney General
State Bar No. 14741550

PATRICIA ANA GARCIA ESCOBEDO
Assistant Attorney General
State Bar No. 12544900

JASON M. WAKEFIELD
Assistant Attorney General
State Bar No. 00789849
Public Agency Representation Section
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Voice: (512) 475-4169
Fax: (512) 322-9114

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon all parties of record, by prepaid United States mail, overnight mail, or via fax, on this 8th day of March, 1996.



RICHARD A. MUSCAT

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